

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

ROBERT J. CONNOR, *aka* RAMADAN  
ABDUL MUBARAK, and EDDIE  
CARROLL, *aka* ISLAAM M. SALAAM,

Plaintiffs,

vs.

JOHN AULT, W.L. KAUTZKY, and  
WILLIAM SOUPENE,

Defendants.

No. C01-4123-MWB

**REPORT AND  
RECOMMENDATION AFTER  
BENCH TRIAL**

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**T**his case concerns the rights of inmates at a state penal institution to participate in religious ceremonies and practices, and to live in accordance with the tenets of their religion. The plaintiffs, practicing Muslims, claim the defendants, State of Iowa employees working at the Anamosa State Penitentiary (“ASP”) in Anamosa, Iowa, deprived them of the right to practice the essential tenets of their religion in violation of the First and Fourteenth Amendments to the United States Constitution. The defendants deny they unconstitutionally interfered with the plaintiffs’ right to practice their religion.

**I. INTRODUCTION**

The plaintiffs filed this action pursuant to 42 U.S.C. § 1983 on December 20, 2001. (Doc. No. 3) They filed an Amended Complaint on November 4, 2002. (Doc. No. 24) In their lawsuit, the plaintiffs claim the defendants violated their “First Amendment rights to the free exercise of [their] religion.” (Doc. No. 24, ¶ 23) They pray for a declaratory judgment, an injunction, an award of actual and exemplary damages, attorney fees, and costs. Venue is proper in this district as the defendants reside, and the events giving rise to this action occurred, in this district. 28 U.S.C. § 1391(b).

On February 11, 2003, the Honorable Mark W. Bennett referred this case to United States Magistrate Judge Paul A. Zoss to conduct any necessary evidentiary hearings and to submit a report and recommended disposition of the case. (Doc. No. 35)

The case came before the court for bench trial on April 8, 2003, at the Federal Courthouse in Cedar Rapids, Iowa. The plaintiffs Robert J. Connor (“Connor”) and Eddie Carroll (“Carroll”) were present in person, and were represented by their attorney, Patrick Ingram. The defendants John Ault (“Ault”), warden of ASP; W.L. Kautzky (“Kautzky”), former director of the Iowa Department of Corrections; and William Soupene (Soupene”), a grievance officer at ASP; did not appear personally at the trial, but were represented by their attorney, Iowa Assistant Attorney General William Hill.

During the course of the trial, the court admitted into evidence, without objection, the following joint exhibits:

- Exhibit 1 Memorandum from Imam Taha Tawil, Chairman of the Islamic Council of Iowa, to the Treatment Director and fellow Chaplains, dated October 15, 2001.
- Exhibit 2 Memorandum from Imam Taha Tawil, Chairman of the Islamic Council of Iowa, to the Treatment Director and fellow Chaplains, dated September 16, 2002.
- Exhibit 3 State of Iowa Department of Corrections Grievance Resolution Process, revised May 2001.
- Exhibit 4 Department of Corrections, Anamosa State Penitentiary, Level Incentive Program, dated July 1, 1999.
- Exhibit 5 Documents relating to grievance #20-0040-02, filed by Connor on January 23, 2002.

- Exhibit 6 Documents relating to grievance #20-0754-01, filed by Carroll on September 30, 2001.
- Exhibit 7 Documents relating to grievance #20-0972-01, completed by Carroll on December 8, 2001, and received by ASP on December 12, 2001.
- Exhibit 8 Documents relating to grievance #20-0950-01, completed by Carroll on December 8, 2001, and received by ASP on December 12, 2001.
- Exhibit 9 Memorandum from Carroll to Warden Ault dated January 12, 2002, re “PROPOSAL/TREATMENT OF MUSLIMS,” and related documents.
- Exhibit 10 Memorandum from Chaplain Carolyn Potter regarding “Ramadan Fast 11-16-01 through 12-15-01,” and related documents.
- Exhibit 12<sup>1</sup> Central Office response dated April 26, 2002, to Connor’s grievance #20-0131-02, received by ASP on March 27, 2002.

Additionally, Plaintiff’s Exhibit 11, a section of the State of Washington Department of Corrections Handbook of Religious Beliefs and Practices relating to Islam, was admitted over the defendants’ objection.

The following witnesses testified at trial on behalf of the plaintiffs: Robert Connor, Eddie Carroll, Muhammad Munier Chaudry, Reverend Carolyn Potter, Antonio Nathaniel Speed, and Dorian Mikael Abdulla. Imam Taha Tawil and Steven Lynn Hebron testified on behalf of the defendants.

The plaintiffs filed a post-trial brief on May 12, 2003. (Doc. No. 43) The defendants filed a post-trial brief, on June 16, 2003, 2003. (Doc. No. 44)

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<sup>1</sup>Exhibit 12 was used by the parties at trial but inadvertently was omitted from the exhibits admitted at trial. The defendants attached a copy of Exhibit 12 to their post-trial brief.

The court has considered the evidence and the arguments of counsel, and now deems the matter to be fully submitted and ready for consideration. After summarizing the evidence and stating the findings of fact, the court will turn to its legal analysis and conclusions of law regarding the plaintiffs' claims. If it finds the defendants are liable on any of the legal theories asserted by the plaintiffs, then the court will determine whether the defendants have established their affirmative defense of qualified immunity. If the concludes the defendants are liable on any legal theory and not entitled to qualified immunity, then the court will determine what remedies are available and appropriate under the circumstances.

## ***II. THE EVIDENCE***

### ***A. Muhammad Chaudry's Testimony***

Muhammad Munier Chaudry ("Dr. Chaudry") testified for the plaintiffs as an expert on the religion of Islam. Dr. Chaudry is Director of the Islamic Council for Food and Nutrition in Chicago, Illinois. He holds two master's degrees in food science and technology, has a doctorate degree in food chemistry, and has published extensively.

Dr. Chaudry testified the term "Halal<sup>2</sup>" is Arabic, and literally means "permitted." The term "Halal" is used in Islam to describe food that Muslims are permitted to eat. When a Muslim eats Halal food, the person receives a blessing.

When a Muslim intentionally eats food that is prohibited by the Islamic faith, it can be a sin. Muslims are not permitted to consume alcohol, pork, blood, or meat from an

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<sup>2</sup>Spellings of Islamic words in this opinion are taken from the Handbook of Religious Beliefs and Practices (Ex. 11).

animal that is dead before it is slaughtered.<sup>3</sup> In general, they also are not permitted to eat meat from an animal that has not been properly blessed and slaughtered in accordance with Muslim dietary requirements, although it appears there are several exceptions to this rule. For example, a Muslim is permitted, as a matter of personal choice, to eat food that has not been blessed and slaughtered in accordance with Islamic dietary requirements if the food has been prepared by “people of the book” (*i. e.*, Jews and Christians). Although it is not a sin for a Muslim to eat such food, particularly when Halal food is not available, there is no blessing associated with eating the food. If a person is dying of starvation and has not had food for at least three days, the person can eat any food, but just enough to survive.

According to Dr. Chaudry, eating Halal food is an important part of the Islamic faith. It provides a blessing at every meal. Also, a Muslim can receive “extra credit” for eating certain foods on special days, such as during the month of Ramadan. Dr. Chaudry testified that an inmate in a prison where Halal food is not available could be a practicing Muslim if a vegetarian diet is available. Such a person might not receive blessings from eating the non-Halal food, but would not be committing a sin.

### ***B. Imam Tawil’s Testimony***

Imam Taha Tawil (“Imam Tawil”) testified for the defendants as an expert witness on the religion of Islam. He also testified about Muslim religious practices at ASP.

Imam Tawil was born in Jerusalem, of Muslim parents. He obtained a degree in Islamic law, and practiced as an attorney of Islamic law for Muslim clients. He also served as an Imam at several locations in Israel. He came to the United States, and

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<sup>3</sup>The court understands this to mean a Muslim cannot eat an animal that has died in circumstances other than being slaughtered for use as food. (See Ex. 11, p. 4)

eventually located in Cedar Rapids, Iowa, where he has been Imam for twenty years. While in Iowa, he finished work on a master's degree in theology and ethics. He is the co-founder of the Inter-Religious Council for Linn County, and a commissioner for the Cedar Rapids Civil Rights Commission. He also officiates at two local mosques.

For over twelve years, Imam Tawil has acted as a consultant to the Iowa Department of Corrections, and to all of its prisons throughout the State of Iowa. In this role, he helps organize religious services and study groups; counsels with inmates; consults with staff; and provides books, religious articles, and other materials to inmates and staff. He also acts as a liaison between inmates and prison administration. His contact at ASP is Steven Hebron, the Treatment Director.

Imam Tawil testified that the basic features of the Islamic faith are the same throughout the world. He described the four primary sources of the Islamic faith. The first and most important source is the Qur'an (or Koran), the holy book of Islam. The second source is the Sunnah, which describes sayings, actions, and traditions of the Prophet Mohammed. The third is the Qiyas, which analyzes situations and compares them to other similar situations where Islamic law has been applied. The fourth is the Ijma', which contains a scholarly consensus of how Islamic law applies in certain situations.

Imam Tawil described the six articles of faith that are required for all Muslims. A Muslim must believe: (1) in only one God; (2) in a day of judgment and resurrection; (3) in angels; (4) that God has revealed messages in his books; (5) in the Prophets who delivered God's messages; and (6) that God has knowledge of what is happening and what will happen in the future. According to the five "pillars" of Islam, to actively practice the Islamic faith a practicing Muslim must: (1) testify, declare, and announce that he or she worships only one God, and Mohamad is God's messenger; (2) pray five times

daily -- at dawn, noon, mid-afternoon, sunset, and nightfall; (3) fast during the month of Ramadan; (4) give charity to the poor; and (5) make a pilgrimage to Mecca once in his or her lifetime. According to Imam Tawil, Islam recognizes that in certain situations, the requirements of the faith must give way to the requirements of survival.

Imam Tawil testified that he and the Iowa Department of Corrections have struggled to develop a system to permit Muslims to practice the major tenets of their faith with the available resources while allowing prison officials to do what is necessary to maintain safety and security in the prisons. At ASP, he has arranged for a communal prayer service, called Jum'ah, to be conducted every Friday afternoon. He has organized a weekly study group called Taleem, where the principles of Islam are taught. He also has arranged for books, magazines, and other literature on Islam to be available to inmates.

Each year, Imam Tawil sends the warden at ASP a memorandum about Ramadan, the Muslim holy month, which occurs at a different time each year. During Ramadan, Muslims fast completely from dawn to sunset, so special arrangements are made to allow Muslim inmates to eat and drink at irregular times. There also is a feast at the conclusion of Ramadan, called Eidul-Fitr, that prison officials are asked to provide to Muslim inmates.

Imam Tawil testified the term "Halal" refers to meat a Muslim is permitted to eat, and the term "Haram" refers to food a Muslim is not permitted to eat. Vegetables, fruits, and drinks such as coffee, tea, water, or milk, are neither Halal nor Haram. The term "Zabiha" refers to meat that has been slaughtered in accordance with Islamic law. If a Muslim eats such meat, he or she receives a blessing. According to Imam Tawil, after saying an appropriate blessing, a Muslim may eat meat that he knows is not Zabiha, unless the meat is Haram or he knows for certain the animal was slaughtered in a name

other than the name of God. Imam Tawil stated that in a prison environment, a Muslim can eat the food generally available to other inmates, so long as it is not Haram. As an example, he testified that when he visits a prison, he gets his food from the food line along with the inmates, pronounces a blessing on it, and then eats it.

Imam Tawil also discussed the five daily prayers. The first prayer is said early in the morning, and can be recited by an inmate in his cell. The second prayer is said at about 1:00 p.m., and the third prayer is said at about 3:30 p.m. These prayers are the most problematic in a prison environment, because they sometimes conflict with required activities. According to Imam Tawil, although prayers are supposed to be said as close to the prescribed time as possible, a Muslim has up until the time of the next prayer to say a particular prayer. Thus, the 1:00 p.m. prayer is best said at 1:00 p.m., but it can be recited up until 3:30 p.m. A Muslim requires between fifteen minutes and one-half hour to prepare for and recite each prayer.

A Muslim ordinarily is required to attend a Jum'ah prayer service on Friday, but if an inmate is in a status that prevents his attendance at the Jum'ah service, the inmate can recite the ordinary prayer for that time. According to Imam Tawil, an inmate prevented by circumstances beyond his control from attending a Jum'ah prayer service commits no sin under Islamic law because "God knows his situation." Similarly, a Muslim is required to attend the Eidul-Fitr feast at the conclusion of Ramadan, but if he is prevented from doing so by circumstances beyond his control, there is no sin. He also testified it is not a sin for a Muslim to eat food served by a homosexual.

Imam Tawil concluded his direct testimony by stating that Muslims at ASP are allowed to practice their faith adequately.

### ***C. Steven Hebron's Testimony***

The defendants also offered the testimony of Steven Lynn Hebron ("Hebron), the Associate Warden and Treatment Director at ASP. Hebron is responsible for records, activities, substance abuse programs, counselors, psychologists, education, and religion at the institution. He also is the immediate supervisor of Reverend Carolyn Potter, the part-time chaplain at the institution. When a complaint or concern relating to a religious issue is raised by an inmate, Hebron first refers the matter to Reverend Potter to see if she can resolve it. If she cannot, Hebron settles the issue. Hebron generally consults with Imam Tawil before addressing any issue involving the Islamic religion.

Hebron provided a history and description of "on call" status at ASP, which, as will be described later in this opinion, is the source of many of the plaintiffs' complaints in this case. Living Unit B (LUB) at ASP is the largest open cellblock in the State of Iowa, and is comprised of a single, totally open cell originally designed for about 300 inmates. As the population at ASP has grown over the years, up to 570 inmates have been housed in LUB.<sup>4</sup> Beginning before 1994, the institution did not have enough prison jobs or program resources to provide for this number of inmates, and noise factors, and control issues, and safety concerns were creating problems. In February 1994, a major disturbance occurred at LUB. As part of the response to these problems, a revised "on call" status was implemented.<sup>5</sup>

As part of the 1994 changes, when a prisoner is first assigned to ASP, he is placed in an orientation program. After completing a one-week initial phase of the orientation, he is placed in "on call" status for a minimum of 30 days, and remains in that status until

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<sup>4</sup>At the time of trial, there were 489 inmates in LUB.

<sup>5</sup>Apparently, "on call" status existed before 1994, but in some other form.

a job is found for him within the institution. While in “on call” status, a prisoner is allowed to leave LUB during the weekend only for meals. During the week, he is allowed out of LUB for a “long day” every other day, and for a “short day” on alternate days. On a “long day,” the prisoner is permitted to leave his cell for meals and for four hours in the afternoon. On a “short day,” a prisoner is permitted to leave his cell only for meals. A prisoner in “on call” status who has a “long day” on Monday, Wednesday, and Friday, would have a “short day” on Tuesday and Thursday. The following week, the prisoner would have a “long day” on Tuesday and Thursday, and a “short day” on Monday, Wednesday, and Friday. At any given time, about 200 inmates are in “on call” status at ASP. This significantly relieves stress on the prison’s resources.

While in “on call” status, a prisoner is not able to attend religious services unless the service takes place in the afternoon of a “long day.” Thus, prisoners in “on call” status are not allowed to attend Saturday or Sunday services. Significant to this case, Muslim prisoners who are in “on call” status can attend Friday Jum’ah services, but only every other week, when their “long day” falls on Friday.<sup>6</sup> Similarly, inmates in “on call” status can attend the communal Eidul-Fitr feast at the conclusion of Ramadan, but only if it falls on their “long day.”

Hebron testified that he has discussed the effect of “on call status” with Imam Tawil, and although Imam Tawil would prefer some other policy, he understands the policy is required by the needs of the institution. Hebron also has discussed with Imam Tawil the fact that work and other scheduled activities sometimes conflict with the time for a daily prayer. Imam Tawil has told Hebron that the prayers can be said at other times of the day when conflicts exist between the prayer times and required activities.

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<sup>6</sup>Interestingly, during the initial week of orientation, prisoners are allowed passes to attend religious services.

Hebron testified he has been told by Imam Tawil that Muslims are not required to eat only Halal food, but Hebron nevertheless has tried to accommodate Muslim inmates on this issue. He stated that in the past, ASP has ordered Halal food for the commissary, but discontinued the practice when the food did not sell. He testified he would consider providing Halal food to inmates at their own expense, but because of the cost, the State would not purchase Halal food for inmates. He pointed out that the institution already provides an optional non-pork diet.

Jum'ah services are held in a "Bible study room" located off of ASP's main chapel. The chapel is usually open when the part-time chaplain is present. Reverend Potter does not work on Fridays, so the chapel ordinarily is locked on Fridays. Because Jum'ah services are on Fridays, the services are supervised by a correctional officer who unlocks the chapel, and then locks the door after the service starts. Hebron has heard complaints from Muslim inmates about arriving late for Jum'ah services and being locked out, but he does not believe these complaints are valid because the inmates could go to the security office and be let into the room even if they arrive late.

On cross-examination, Hebron admitted the doors are left unlocked throughout Christian religious services on Sundays. He distinguished Sunday services from Friday services by the fact that on Sunday, the chaplain is present. He admitted that in some circumstances, the chaplain is unavailable for Sunday Protestant services, yet the doors remain unlocked throughout those services. He was unable to explain why the presence of a correctional officer should not allay any concerns with keeping the doors unlocked for Friday Jum'ah services, except to state that the stairway to the room where the Friday services are held is more dangerous on Friday when there is less traffic. He stated the greater amount of traffic on Sundays makes the chapel safer than the lighter traffic during Friday services because the entrance to the services is through a closed stairway.

Hebron admitted it would be possible to give passes to inmates who are in “on call” status so they could attend religious services on their short days or on weekends, but he testified this would defeat one of the major purposes of “on call” status, which is to restrict the number of inmates allowed out of LUB at the same time.

#### ***D. Robert Connor’s Testimony***

Plaintiff Conner has been an inmate at ASP since February 2001, and has been a practicing Muslim for many years. While at ASP, he has participated in two Ramadan celebrations.

In his testimony, Conner described the Ramadan celebration at the Iowa State Penitentiary (ISP) at Fort Madison, Iowa, where he was incarcerated before being transferred to ASP, and then he described how the Ramadan celebration at ASP is inferior. At ISP, the inmates were permitted to celebrate the Eidul-Fitr feast as an “all day event.” A committee of inmates prepared the food, which was obtained by the inmates at their own expense from an outside vendor of Halal foods. All Muslim inmates, including those in lock-down, were allowed to participate in the event, either by attending the feast or by receiving a tray or sack in their cells. During Ramadan at ASP, the inmates are not permitted to purchase and prepare Halal food, but are given a tray of ordinary food prepared by an outside vendor from the local area. The quantity of food provided is not sufficient to last the entire day. He stated that during Ramadan at ASP, “I never felt so bad in my heart.”

When Connor first entered ASP, he was in “on call” status. As a result, he missed most of the first Eidul-Fitr feast while he was at ASP. Also, while he was in “on call” status, every other week he was not able to attend Jum’ah services on Friday afternoons.

He also missed Jum'ah services at least once because he was held up and arrived late, and the door to the room where the service was being held was locked.

He testified that because officials at ASP do not honor his requests to eat Halal foods, he does not receive a diet consistent with his religious needs. He believes this prevents him from making his religion his "full and complete way of life." He complained about the fact that homosexuals are permitted to work in the kitchen and prepare his food, which he believes is contrary to his faith. He testified that when he worked in the kitchen, a supervisor refused to give him time off to say his afternoon prayers, and when he complained about it to her superiors, he was moved to a lower paying job. He testified that, in general, he feels his religious rights are interfered with at ASP "every day," stating that because of this, "I cry. It hurts."

During cross-examination, Connor clarified that he has missed Jum'ah services three times while he was in "on call" status at ASP: once after orientation, another after a disciplinary infraction, and a third because of a decision by the program classification committee.

### ***E. Eddie Carroll's Testimony***

Plaintiff Carroll testified he currently lives in Chicago, having been released from ASP about a week prior to the trial. He was an inmate at ASP for a little over a year prior to his release. He has been a Muslim for about three years.

Before being transferred to ASP, Carroll was incarcerated at ISP in Fort Madison, Iowa. He celebrated one Ramadan at ISP, and described how the Muslim inmates were permitted to plan and put on a feast for Eidul-Fitr. Muslim inmates and the Islamic Council of Iowa contributed money to a special fund, Halal meat was ordered once sufficient funds were raised, and Muslim inmates prepared the feast in the ISP kitchens.

The feast was provided to all Muslim inmates, including those who were in lock-down status.

Carroll compared the ISP experience with the two Ramadan celebrations that took place while he was at ASP. He was involved in planning the Eidul-Fitr feast for his second Ramadan at ASP, and spoke with Hebron about ordering in Halal meat for the feast. Hebron told Carroll he would allow the inmates to order precooked Halal meat, but would not allow them to purchase meat that had to be prepared in the prison kitchen. Carroll testified the option of ordering precooked meat was unappealing because it was not consistent with the nature of a “feast,” which he believes contemplates hot food.

He also testified he often had missed Jum’ah services because of “on call” status, he had been denied the right to pray while working at his job, and he had been denied entrance to Jum’ah services because the doors were locked when he arrived late.

On cross-examination, Carroll clarified that his job, which was in the kitchen, involved a twelve-hour shift, but he actually worked from 5:00 a.m. to 8:00 a.m., then from 10:00 a.m. to 12:15 p.m., and then from 3:00 p.m. to 5:00 p.m.

#### ***F. Testimony of the Plaintiffs’ Other Witnesses***

In addition to their own testimony and Dr. Chaudry’s testimony, the plaintiffs offered the testimony of three witnesses: Reverend Potter, the ASP chaplain; Antonio Nathaniel Speed (“Speed”), an inmate at ASP; and Dorian Mikael Abdulla (“Abdulla”), another inmate at ASP.

Rev. Potter testified she first was the Catholic chaplain at ASP, but now she is the sole, part-time chaplain for the institution. She has a Master of Divinity degree from Harvard Divinity School, and a law degree from the University of California at Berkeley. She works thirty-two hours a week, and ordinarily is in the prison chapel four days a

week. As part of her duties, Rev. Potter arranges for and schedules all of the worship services at the institution; coordinates with outside consultants, such as Imam Tawil; makes arrangements to get donations of books and resources from different religious groups and publishers; counsels inmates; and presides at memorial services.

Rev. Potter testified it would not be difficult for her to write a pass to attend a religious service for someone who is in “on call” status, and she tries to encourage communal worship. She also testified she was not aware of any reason why inmates in “on call” status could not attend religious services, although on cross-examination she acknowledged institutional security concerns are not part of her job.

Speed testified he had been an inmate at ASP for three months, and he was in “on call” status for sixty days, during which he was not allowed to attend Jum’ah services on his “short days.” He also was not permitted to participate in the communal Eidul-Fitr celebration at the conclusion of Ramadan, and was not provided with the special meal. He testified he has been denied entrance into Jum’ah services when he arrived late and the doors were locked.

Abdulla testified he had been an inmate at ASP for two years. He is a Muslim, and the resident Imam at the institution. He described how in preparation for the last Eidul-Fitr celebration, he and the plaintiff Carroll approached prison officials and asked for permission to purchase Halal food for the celebration. He testified Hebron approved the request, contingent on the Muslim community paying for the food with their own funds. After Abdulla had arranged for the funds, he returned to Hebron. Hebron then told Abdulla that any Halal meat ordered for the celebration had to be precooked. According to Abdulla, Hebron stated the prison had no funds to prepare raw meat for the feast. Abdulla advised Hebron that the Muslim inmates would take the responsibility for cooking the meat, but Hebron would not agree. Because Abdulla did not want to arrange

for a feast consisting of cold, precooked meat, he arranged for food for the feast, not including Halal meat, to be delivered from a local vendor.

### ***III. FINDINGS OF FACT***

The plaintiffs Connor and Carroll both are practicing Muslims, and at all times material to this lawsuit have been sincere followers of the Islamic faith. Connor has been an inmate at ASP since 2001, and remains at the institution. Carroll was an inmate at ASP from early 2002, to the beginning of April 2003, when he was released from custody.

Connor complains that he was denied the right to participate in communal prayer services on three Fridays and at the conclusion of one Ramadan. This occurred because he was in “on call” status on each of these occasions. He also complains about missing one Friday communal prayer service when he arrived late and the door was locked. Additionally, he complains that on several occasions, he was not allowed to pray at the proper time because of assigned work duties, and when he complained about this problem, he was transferred to a lower paying job. Finally, he complains about his diet, including the fact that he is not provided with Halal food, and his food sometimes is prepared or served by homosexuals.

Carroll complains that he was denied the right to participate in communal prayer services on several Fridays because he was in “on call” status, he was denied the right to pray while working at his job, and he was denied entrance to several Friday prayer services because he arrived late and the doors were locked. He also complains about the type of food that was served at the Eidul-Fitr feasts at ASP.

The court finds neither plaintiff has been denied the right to offer daily prayers. The court accepts the testimony of Imam Tawil that there is no precise time of day

required for the five daily prayers. The plaintiffs were given the opportunity to offer all five of the prayers each day, although not always at the times the plaintiffs would have preferred. The court also finds the plaintiffs always have been provided with food that was acceptable to eat under the principles of Islam.

The plaintiffs have two remaining issues. They complain about the doors to the chapel being locked after the commencement of Friday prayer services. They also complain about being denied access to communal prayer services while in “on call” status.

Prisoners sometimes are delayed, often through no fault of their own, and cannot make it to religious services on time. The doors to the room where Friday Islamic prayer services are held are locked shortly after the services begin, while the same doors remain unlocked during Sunday Christian services. As a result, prisoners who are late for Islamic services are met with a locked door, while prisoners who are late for Christian services are allowed to enter and participate. Hebron testified prisoners who are late for Muslim services can ask a guard at the security office to let them in, but this apparently was not known to the plaintiffs.

The court finds this situation, while regrettable, did not result from any intentional action by any of the named defendants to deny the plaintiffs the right to exercise their religious freedoms and beliefs. The limitation on the plaintiffs’ right to worship caused by the locked doors was minor. There was a solution to the problem – a late inmate could ask a guard let him into the room – that the plaintiffs could have learned about if they had made the appropriate inquiry. Finally, the doors to the room were locked for reasons of safety and security, a concern uniquely within the discretion of prison officials.

Similarly, the limitations on the plaintiffs’ right to worship resulting from the prison’s “on call” policy” are an unintended consequence of efforts by prison officials to

apportion limited resources at the institution by limiting the numbers of inmates who are utilizing those resources. The fact that an inmate is unable, for a short period of time, to attend a religious service is a regrettable consequence of these efforts.<sup>7</sup>

#### **IV. LEGAL ANALYSIS**

##### **A. Defendants Subject to Suit**

In their post-trial brief, the defendants contend Ault is the only named defendant who is subject to suit, and the allegations at issue in the instant action should be limited to those where he had a direct role. More specifically, the defendants claim Kautzky, acting only as a supervisor, cannot be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, and Soupene, acting only as a grievance counselor, cannot be held liable under 42 U.S.C. § 1983 because a claim relating to grievances does not state a substantive constitutional claim.

Liability under 42 U.S.C. § 1983 may not be grounded upon a *respondeat superior* theory. *Canton v. Harris*, 489 U.S. 378, 385, 109 S. Ct. 1197, 1203, 103 L. Ed. 2d 412 (1989); *Oklahoma City v. Tuttle*, 471 U.S. 808, 810, 105 S. Ct. 2427, 2429, 85 L. Ed. 2d 791 (1985); *Monell v. Dept. of Soc. Serv.*, 436 U.S. 658, 691-95, 98 S. Ct. 2018, 2036-38, 56 L. Ed. 2d 611 (1978); *Liebe v. Norton*, 157 F.3d 574, 579 (8th Cir. 1998); *White v. Holmes*, 21 F.3d 277, 280 (8th Cir. 1994); *Choate v. Lockhart*, 7 F.3d 1370, 1376 (8th Cir. 1993); *Bolin v. Black*, 875 F.2d 1343, 1347 (8th Cir. 1989). That is, one cannot be held liable for another's act simply because he or she has supervisory authority over one who deprived a plaintiff of a constitutional right. *Id.* The plaintiffs have failed

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<sup>7</sup>Notably, the effect of “on call” status is to deny Christian inmates access to *all* Sunday worship services because inmates in this status are, essentially, locked down throughout every weekend. Muslim inmates in “on call” status are able to attend worship services every other Friday.

to identify how Kautzky was personally involved with the alleged violations of their constitutional rights. Thus, the court finds Kautzky should be dismissed from this action.

With respect to Soupene, the court agrees with the defendants' characterization that the allegations against him stem from his denial of several grievances filed by Carroll. The court also agrees Soupene's denial of Carroll's grievances does not state a substantive constitutional claim. *See Lomholt v. Holder*, 287 F.3d 683, 684 (8th Cir. 2002) (citing *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993)). Therefore, the court finds Soupene should be dismissed from this action.

Having determined that Kautzky and Soupene are not subject to liability for the plaintiffs' claims, the court will consider only those claims relating to Ault, the remaining defendant. Although the claims against Ault arguably could be limited to those actions in which he had a direct role, the court will address the merits of the plaintiffs' constitutional claims in the interests of justice.

### ***B. Exhaustion of Administrative Remedies***

42 U.S.C. § 1997e(a) provides:

No action shall be brought with respect to prison conditions under [section 1983] of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

To satisfy the requirements of 42 U.S.C. § 1997e(a), a prisoner must allege that he or she exhausted all available administrative remedies, and he or she should attach to his or her 42 U.S.C. § 1983 complaint the administrative decision, if it is available, showing the disposition of his or her claim or grievance. *McAlphin v. Morgan*, 216 F.3d 680, 682 (8th Cir. 2000) (citing *Brown v. Toombs*, 139 F.3d 1102, 1104 (6th Cir. 1998)). *See also*

*Booth v. Churner*, 532 U.S. 731, 733-34, 121 S. Ct. 1819, 1821, 149 L. Ed. 2d 958 (2001) (explaining 42 U.S.C. § 1997e(a)).

The grievance system available to inmates in the Iowa prison system utilizes a multi-level process in which inmates can appeal first to the Warden, and then to the Regional Deputy Director of the Iowa Department of Corrections. (See Ex. 3) From the record, it appears Connor submitted two grievances relevant to this action. The first grievance, #20-0040-02, was filed January 23, 2002. (See Ex. 5) Soupene did not process the grievance because it addressed multiple issues, and he instructed Connor to complete a separate grievance form for each issue. (*Id.*) Connor never reasserted those claims on separate forms.

Connor filed another grievance, #20-0131-02, on March 27, 2002. (See Ex. 12) In the grievance, Connor asked ASP to “supply all Muslims with their proper religious diet of Halal foods and drink and put a stop to the all out ban on Halal foods and drinks at meal times.” (*Id.*) Connor’s request was denied on April 26, 2002. (*Id.*)

Both of Connor’s grievances were filed *after* this lawsuit was filed on December 20, 2001. In addition, with respect to grievance #20-0040-02, Connor arguably failed to exhaust all of the available administrative remedies before bringing this action, as required by 42 U.S.C. § 1997e(a). See 42 U.S.C. § 1997e(a); *Lyon v. Vande Krol*, 305 F.3d 806, 809 (8th Cir. 2002) (although it is defendants’ burden to show plaintiff failed to exhaust remedies, case may be dismissed where failure to exhaust is not disputed) (citing *Booth*, 532 U.S. at 737-41, 121 S. Ct. at 1819); *Walker v. Maschner*, 270 F.3d 573, 577 (8th Cir. 2001) (finding plaintiff’s claim barred by 42 U.S.C. § 1997e(a)); *McAlphin*, 216 F.3d at 682 (finding plaintiff failed to meet the requirements of 42 U.S.C. § 1997e(a)) (citing 42 U.S.C. § 1997e(a) and *Rivers-Frison v. Southeast Missouri Cmty. Treatment Ctr.*, 133 F.3d 616, 619 n.2 (8th Cir. 1998)); *Chelette v.*

*Harris*, 229 F.3d 684, 688 (8th Cir. 2000) (“The [requirements of 42 U.S.C. § 1997e(a)] are clear: if administrative remedies are available, a prisoner must exhaust them.”). Although it appears Connor failed to exhaust his administrative remedies, the court finds it would be best to resolve the issue raised by Connor on its merits.

Regarding Carroll, it appears he submitted three grievances prior to filing this lawsuit. In grievance #20-0754-01, filed September 30, 2001, Carroll alleged “on call” status prevented him from attending weekly communal prayer services. (See Ex. 6) In grievance #20-0950-01, completed by Carroll on December 8, 2001, and received by ASP on December 12, 2001, Carroll claimed he was unable to pray during work hours. (See Ex. 8) And in grievance #20-0972-01, also completed by Carroll on December 8, 2001, and received by ASP on December 12, 2001, Carroll asserted the locked chapel door prevented him from attending weekly communal prayer services. (See Ex. 7) Of these three grievances, it appears from the Record that Carroll exhausted his administrative remedies only with respect to grievance #20-0754-01, prior to filing the instant action. However, the defendants state Carroll exhausted his administrative remedies with respect to all three grievances. The court therefore deems the defense of failure to exhaust remedies waived with respect to Carroll’s grievances. See *Foult v. Charrier*, 262 F.3d 687, 697 (8th Cir. 2001) (“Our court has recognized that reliance on the PLRA exhaustion requirement can be waived. . . . It is the burden of the defendant asserting this affirmative defense to plead and prove it.”) (citing *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 536 (7th Cir. 1999) (“Defendants may waive or forfeit reliance on § 1997e(a), just as they may waive or forfeit the benefit of a statute of limitations.”); *Massey v. Helman*, 196 F.3d 727, 735 (7th Cir. 1999)).

Accordingly, the court turns now to a review of the plaintiffs' claims regarding the absence of a Halal diet, and the inability to pray during work hours, to attend Jum'ah after the door is locked, and to participate in Islamic events when in "on call" status.

### ***C. Establishment of Restrictive Policy and Constitutional Violation***

"In a claim arising under the First Amendment's Free Exercise Clause, an inmate must first establish that a challenged policy restricts [his or her] free exercise of a sincerely held religious belief." *Brown-El v. Harris*, 26 F.3d 68, 69 (8th Cir. 1994) (citing *Iron Eyes v. Henry*, 907 F.2d 810, 813 (8th Cir. 1990)). See also *Hill v. Blackwell*, 774 F.2d 338, 342-43 (8th Cir. 1985) (espousing restrictive policy requirement). The determination of whether an individual is sincere in his or her beliefs is a factual one. *LaFevers v. Saffle*, 936 F.2d 1117, 1119 (10th Cir. 1991) (citing *Frazer v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 832-33, 109 S. Ct. 1514, 1517, 103 L. Ed. 2d 914 (1989)). If a court determines a challenged policy restricts an inmate's sincerely held religious belief, then it must decide whether the same policy violated the inmate's constitutional rights. See *Brown-El*, 26 F.3d at 69-70 (implicitly determining there was no need to address whether the challenged policy violated a constitutional right because it did not restrict the inmate's religious freedom in the first place). See also *Kind v. Frank*, 329 F.3d 979, 980-81 (8th Cir. 2003) (failure to provide Muslim inmate a meat-free diet restricted his free exercise of a sincerely held belief but defendants were entitled to defense of qualified immunity).

"When analyzing actions that impinge upon prisoners' constitutional rights, [federal courts] steer between two well-established principles: on the one hand, prisoners do not lose all their constitutional rights while behind bars; on the other hand, [deference is given] to the judgment of those officials responsible for the inordinately difficult task

of operating a prison.” *Quinn v. Nix*, 983 F.2d 115, 118 (8th Cir. 1993). *See also Bell v. Wolfish*, 441 U.S. 520, 545, 99 S. Ct. 1861, 1877, 60 L. Ed. 2d 447 (1979) (inmates retain protections afforded by the First and Fourteenth Amendments); *Falls v. Nesbitt*, 966 F.2d 375, 379 (8th Cir. 1992) (“It is fundamental that prison administrators are accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”) (citing *Bell*, 441 U.S. at 546-47, 99 S. Ct. at 1878). “The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives -- including deterrence of crime, rehabilitation of prisoners, and institutional security.” *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348, 107 S. Ct. 2400, 2404, 96 L. Ed. 2d 282 (1987) (citations omitted).

Free exercise claims by prisoners are judged under a “reasonableness” test. *O’Lone*, 482 U.S. at 349-50, 107 S. Ct. at 2404. The specific standard of review is as follows: prison regulations which impinge on inmates’ constitutional rights are valid if they are “reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64 (1987) (citing *Jones v. North Carolina Prisoners’ Union*, 433 U.S. 119, 128, 97 S. Ct. 2532, 2539, 53 L. Ed. 2d 629 (1977)). To determine whether prison regulations are reasonably related to legitimate penological interests, the following four factors are utilized: (1) whether there is a valid, rational connection between the regulation and legitimate governmental interests put forward to justify it; (2) whether alternative means of exercising the right remain open to the prison inmate; (3) the impact that accommodation of the asserted right will have on inmates, guards, and the allocation of prison resources generally, and whether accommodation will trigger a “ripple effect” on fellow inmates and staff; and (4) whether a ready alternative to the regulation would fully accommodate the prisoner’s right at a *de*

*minimis* cost to the valid penological interest. *Turner*, 482 U.S. at 89-91, 107 S. Ct. at 2262. See also *O’Lone*, 482 U.S. at 349-50, 107 S. Ct. at 2404-05 (discussing the standard in the context of prisoners’ free exercise claims).

The Supreme Court subsequently emphasized that the relevant inquiry is whether the regulation is rationally related to a legitimate and neutral objective. See *Washington v. Harper*, 494 U.S. 210, 223, 110 S. Ct. 1028, 1037, 108 L. Ed. 2d 178 (1990) (discussing *Turner* and *O’Lone*). This standard must be applied even when the “constitutional right claimed to have been infringed is fundamental, and the State under other circumstances would have been required to satisfy a more rigorous standard of review.” *Id.* See also *Goodwin v. Turner*, 908 F.2d 1395, 1398-99 (8th Cir. 1990) (following *Washington*).

With these considerations in mind, the court turns to a discussion of the plaintiffs’ specific claims.

**1. Interference with daily prayer, Halal diet, and attendance at communal prayer services**

As previously indicated, before the *Turner* factors are applied to a prisoner’s free exercise claim, an inmate must establish the existence of a sincerely held religious belief, and that the challenged regulation infringes upon that belief. See *Brown-El*, 26 F.3d at 69; *Iron Eyes*, 907 F.2d at 813; *Hill*, 774 F.2d at 342-43. The defendants do not dispute that the plaintiffs’ desires to pray five times each day, eat a Halal diet, and participate in other Islamic activities are based on sincerely held religious beliefs. Because there is nothing in the record which suggests otherwise, the court concludes that each plaintiff holds sincere religious beliefs. See *LaFevers*, 936 F.2d at 1119 (sincere religious belief determination is factual in nature). See also *Iron Eyes*, 907 F.2d at 813 (holding lower

court's determination that plaintiff sincerely held a religious belief against cutting his hair was not clearly erroneous).

Nevertheless, with regard to the five required daily prayers, the Halal diet, and the locked door during communal prayer services, the plaintiffs have failed to establish that the defendants' actions significantly restricted their sincere religious beliefs. Concerning the five required daily prayers, the court accepts Imam Tawil's explanation that although the prayers are supposed to be said as close to the prescribed time as possible, a Muslim has until the time of the next prayer to say a particular prayer. The plaintiffs have not presented any contrary testimony by any qualified religious leader. Moreover, ASP's current policy tries to accommodate the needs of Muslim inmates to say five daily prayers. (See Exs. 2 & 8) The court finds the plaintiffs are given adequate opportunities to complete their individual prayers during work hours.

The plaintiffs' complaints about the food offered and served to them throughout the year are without merit. Rather than offer evidence that the food is inadequate in nutrition or quantity because of their religious beliefs, the plaintiffs merely state their desire to have Halal food at each meal and warm Halal food during Eidul-Fitr, the feast at the conclusion of Ramadan. Apart from those two desires, Connor desires to have his food prepared and served by non-homosexual inmates. Conner did not offer any evidence that homosexual inmates engage in unhygienic practices when preparing or serving his food, and neither plaintiff asserted his religion requires the consumption of Halal meat. Further, the testimony offered by Dr. Chaudry and Imam Tawil does not establish that Islam mandates a Halal diet at all times. Indeed, the evidence is undisputed that a Muslim may eat an exclusively vegetarian diet without violating his religion. More importantly, Imam Tawil testified that the food currently offered by ASP meets the requirements of a Muslim diet.

Because a Halal diet is not a requirement of the Islamic religion and the plaintiffs were given the opportunity to supplement their diets with other foods which were not counter to their religious beliefs, the court concludes the defendants did not significantly interfere with the plaintiffs' sincerely held religious beliefs.

Finally, with respect to the locked door during communal prayer services, the evidence in the record indicates the plaintiffs were not consistently prevented from attending. In fact, the record shows inmates who arrived on time were always able to attend communal prayer services, and inmates who arrived late were able to attend if they asked the guard to open the locked door. Based on the record, the court concludes the locked chapel door did not significantly restrict the plaintiffs' religious freedoms.

Thus, regarding the five daily prayers, Halal diet, and locked door claims, the plaintiffs have failed to prove any of the challenged practices or alleged facility deficiencies significantly interfered with their religious practices. *See Deering-Bey v. Zeller*, 162 F.3d 1163, 1998 U.S. App. LEXIS 18294, 1998 WL 480173 (8th Cir. 1998) (Table) (concluding practice of providing Muslim inmate with non-pork diet when advised by jail chaplain that this is the sect's only dietary restriction did not significantly infringe upon the inmate's religion); *Brown-El*, 26 F.3d at 69-70 (finding prison policy of removing inmates who broke the fast from the Ramadan list did not restrict the plaintiff's religious freedom). *Cf. Kind*, 329 F.3d at 980-81 (failure to provide Muslim inmate a meat-free diet restricted his free exercise of a sincerely held belief, but defendants were entitled to defense of qualified immunity); *Love v. Reed*, 216 F.3d 682, 688-90 (8th Cir. 2000) (holding refusal to provide food to adherent of Hebrew religion substantially burdened his beliefs and option of fasting on the Sabbath was not a reasonable accommodation). Stated differently, the plaintiffs have failed to demonstrate the

defendants' actions were tantamount to placing a restriction on their ability to practice Islam.<sup>8</sup>

## **2. Interference with religious observances during “on call” status**

The defendants do not deny that “on call” status prevents prisoners from performing all of the customary Islamic observances, such as attending Jum’ah services and participating in the Ramadan feast. However, the defendants note the restrictions associated with “on call” status are limited in duration, only applying until an inmate rises to the next incentive level, which may be achieved any time after 30 days. Nevertheless, based on the evidence, the court finds ASP’s “on call” system infringes upon the plaintiffs’ sincerely held religious beliefs. Therefore, the court will analyze the *Turner* factors with respect to the plaintiffs’ “on call” claims.

Applying the first factor, the court must determine whether ASP’s “on call” policy is rationally related to a legitimate and neutral objective. *See Washington*, 494 U.S. at 223, 110 S. Ct. at 1037. *See also Thornburgh v. Abbott*, 490 U.S. 401, 414-15, 109 S. Ct. 1874, 1882, 104 L. Ed. 2d 459 (1989) (discussing neutrality criterion). In making this determination, the Supreme Court has instructed courts to defer to the expertise and considered judgment of prison officials who are charged with and trained in the administration of the particular institution under examination. *O’Lone*, 482 U.S. at 349-50, 107 S. Ct. at 2404.

The defendants claim the “on call” policy is necessary for two reasons. First, it promotes positive inmate behavior. As part of ASP’s level incentive program, “on call”

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<sup>8</sup> Because it concludes the defendants did not significantly interfere with the plaintiffs’ ability to complete the five daily prayers, eat a Halal diet, or attend communal religious services even though the door was locked, the court does not need to analyze the *Turner* factors with respect to these claims.

is designed to encourage inmates to act appropriately in order to gain more privileges. Second, the policy helps maintain institutional security. The defendants explain that a major disturbance among the inmates gave rise to the “on call” policy. ASP implemented the “on call” policy because the number of LUB inmates who were allowed to be out of their cells at any given time had to be curtailed to prevent inmates from causing major disturbances. The plaintiffs have not presented any evidence that the “on call” policy lacks a rational connection to a legitimate penological concern.

Clearly, prison officials have a legitimate interest in maintaining order and security within the prison system. *See Hudson v. Palmer*, 468 U.S. 517, 524, 104 S. Ct. 3194, 3199, 82 L. Ed. 2d 393 (1984) (internal security is foremost among a penal system’s legitimate objectives); *Dawson v. Scurr*, 986 F.2d 257, 260 (8th Cir. 1993) (security is a valid penological goal) (citing *O’Lone*, 482 U.S. at 349-50, 107 S. Ct. at 2405). The “on call” policy prohibits LUB inmates from leaving their cells on alternate weekdays and on weekends. It is neutral and provides no exceptions. Its clear intent is to restrict LUB inmates who, because of their large numbers, pose a safety or security concern. Consequently, the court finds as a matter of law that the “on call” policy at issue is rationally related to the legitimate penological interests of maintaining safety and security. *See Washington*, 494 U.S. at 223-24, 110 S. Ct. at 1037-38; *Turner*, 482 U.S. at 89, 107 S. Ct. at 2262.

The second factor relevant in determining the reasonableness of a prison restriction is whether alternative means of exercising the right exist. *See Turner*, 482 U.S. at 89, 107 S. Ct. at 2262. “[T]he right’ in question must be viewed sensibly and expansively.” *Thornburgh*, 490 U.S. at 417, 109 U.S. at 1883-84. *See also Iron Eyes*, 907 F.2d at 814-15 (refusing to adhere to a narrow definition of “the right” at issue when reviewing hair length regulation). *See, e.g., O’Lone*, 482 U.S. at 351-52, 107 S. Ct. at 2406 (holding

prison regulation preventing Muslim inmates from attending Jum'ah services was constitutional because they had many other opportunities to express their faith, such as ability to congregate outside of working hours for prayer or discussion, ability to avoid pork, and ability to observe Ramadan); *Turner*, 482 U.S. at 92, 107 S. Ct. at 2263 (prison policy prohibiting correspondence with inmates at other institutions is constitutional as long as other means of expression, not necessarily with inmates at other institutions, remained available). Thus, when analyzing whether alternative means are available, it is not impermissible to preclude participation in one particular religious activity so long as other opportunities are available for an inmate to express his or her faith. *Thornburgh*, 490 U.S. at 417-18, 109 S. Ct. at 1883-84 (discussing *O'Lone* and *Turner*).

The record reflects the plaintiffs are allowed reasonable opportunities to practice their faith when in "on call" status. The opportunities offered to the plaintiffs to practice Islam are at least comparable to the opportunities offered to inmates of other faiths. Indeed, the plaintiffs are allowed to eat a pork-free diet, pray daily, read the Qur'an, participate in weekly study sessions, discuss religious issues with other inmates at their leisure, attend communal religious services every other week, celebrate Ramadan, and partake in Eidul-Fitr if it falls on a "long day." Even though ASP's "on call" policy prevents the plaintiffs from attending Jum'ah services every other Friday and participating in Eidul-Fitr if it falls on a "short day," the court finds participation in other activities of the Islamic faith remained open to the plaintiffs.

The third factor requires the court to examine the impact an accommodation of the asserted right would have on other inmates and employees in the prison, and on prison resources. *See Turner*, 482 U.S. at 90, 107 S. Ct. at 2262; *Thornburgh*, 490 U.S. at 418, 109 S. Ct. at 1884. Where the restriction is limited to an activity deemed to be "potentially detrimental to order and security," and the "right in question 'can be

exercised only at the cost of significantly less liberty and safety for everyone else, guards and other prisoners alike,’ the courts should defer to the ‘informed discretion of correctional officials.’” *Thornburgh*, 482 U.S. at 90, 107 S. Ct. at 2262 (quoting *Turner*, 482 U.S. at 90-92, 107 S. Ct. at 2263).

At trial, the defendants spent considerable time demonstrating the impact on the prison that would result from allowing all Muslim inmates in LUB to attend Jum’ah services and Ramadan-related events. There appears to be no significant difference between a Muslim’s request to attend a Jum’ah service or Ramadan event and a request by a Christian, Jew, or member of another religion to attend a religious service that takes place during times an “on call” inmate is not free to attend. If “on call” inmates were permitted to attend all religious services, the number of LUB inmates who are not confined to their cells would increase. According to the defendants, the increase would pose an impermissible potential threat to the safety and internal security of inmates and staff at ASP. If true, it would follow that accommodating requests to attend a Jum’ah service or a Ramadan-related event would have an adverse effect upon the safety of prison staff and other inmates, as well as the general internal security of the prison.

The court notes there are relatively few “on call” Muslim inmates at ASP. As discussed earlier, limiting the number of “on call” inmates who are permitted out of their cells is one method ASP utilizes to maintain institutional security. According to the defendants, ASP also furthers the goal of institutional security by providing “on call” inmates with additional privileges if they act in accordance with prison rules. Exempting Muslim inmates from the “on call” policy so they can attend Islamic events could weaken the level incentive program. In addition, such an exemption could cause prisoner friction and unrest at ASP. See *Iron Eyes*, 907 F.2d at 814-15 (the danger of prison friction and unrest resulting from giving, or appearing to give, special treatment to one group of

prisoners is a valid concern). *See also O’Lone*, 482 U.S. at 352-53, 107 S. Ct. at 2406-07 (special arrangements for one group may create problems because other inmates perceive favoritism); *Turner*, 482 U.S. at 90-91, 107 S. Ct. at 2262 (discussing proper course when the accommodation will have a significant ripple effect on fellow inmates or on prison staff); *DeHart v. Horn*, 227 F.3d 47, 53 (3d Cir. 2000) (examining prison’s interest in avoiding jealousy among inmates). Consequently, the court finds the impact an accommodation could have on the inmates and staff at the prison, and on prison resources, supports ASP’s decision not to allow “on call” inmates to participate in religious activities that do not fit within the “on call” schedule. *See O’Lone*, 482 U.S. at 352-53, 107 S. Ct. at 2406-07.

The final factor directs courts to assess whether there are alternatives to the regulation that would impose only “de minimis cost to valid penological interests.” *Turner*, 482 U.S. at 91, 107 S. Ct. at 2262. “The absence of ready alternatives is evidence of the reasonableness of a prison regulation.” *Id.* However, “if an inmate claimant can point to an alternative that fully accommodates the prisoner’s rights at de minimis cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard.” *Id.* *See also Thornburgh*, 490 U.S. at 418, 109 S. Ct. at 1884.

As an accommodation of their practices, the plaintiffs suggest the defendants could issue passes to attend Jum’ah services and Ramadan-related events when Muslim inmates are in “on-call” status. Based on the court’s analysis of the prior factor, the court defers to the judgment of the prison officials that this alternative is likely to produce undesirable consequences.

Looking at the totality of all four factors, the court concludes the temporary restriction on the plaintiffs’ right to attend Jum’ah services and participate in Ramadan

is reasonably related to legitimate penal concerns. *See O’Lone*, 482 U.S. at 350-53, 107 S. Ct. at 2405-07 (prison regulation which made it impossible for Muslim inmates to attend Jum’ah services deemed constitutional because it was reasonably related to legitimate penological interests); *Sweet v. South Carolina Dep’t of Corrections*, 529 F.2d 854, 863 (4th Cir. 1975) (upholding prison policy of forbidding inmates in protective custody from attending group religious services); *Herlein v. Thalacker*, Case No. C94-0236 (N.D. Iowa 1996) (analyzing ASP’s “on call” policy and determining standard under Religious Freedom Restoration Act and standard under *Turner* met). *Cf. Love*, 216 F.3d at 690-91 (holding refusal to provide food to adherent of Hebrew religion infringed upon his sincerely held religious beliefs and such refusal could not be justified as having a reasonable relationship to a legitimate penological interest). Although they are unable to exercise their right to freely exercise their religion in the manner they prefer, the plaintiffs did not demonstrate that ASP’s “on call” policy violates their First Amendment rights. Accordingly, the defendants are entitled to judgment as a matter of law.<sup>9</sup>

## V. CONCLUSION

For the foregoing reasons, **IT IS RECOMMENDED** that, unless any party files objections<sup>10</sup> to the report and recommendation in accordance with 28 U.S.C.

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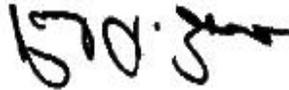
<sup>9</sup>Having determined the defendants are entitled to judgment as a matter of law, the court does not address the defendants’ additional arguments and defenses.

<sup>10</sup> The plaintiff must specify the parts of the report and recommendation to which objections are made. The plaintiff also must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See Fed. R. Civ. P. 72*. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356, 357-58 (8th Cir. 1990).

§ 636(b)(1)(C) and Fed. R. Civ. P. 72(b) within ten (10) days of the service of a copy of this report and recommendation, judgment be entered in favor of the defendants.

**IT IS SO ORDERED.**

**DATED** this 6th day of August, 2003.



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PAUL A. ZOSS  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT